



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 210916-0190]

RIN 0648-BK68

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery;

Amendment 21

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement through regulations measures included in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan, which the New England Fishery Management Council adopted and submitted to NMFS for approval. This action would allow for more controlled access to the scallop resource by the limited access and limited access general category fleets and increase monitoring to a growing directed scallop fishery in Federal waters, including the Northern Gulf of Maine Management Area. These proposed management measures are intended to promote conservation of the scallop resource in the Northern Gulf of Maine Management Area and to manage total removals from the area by all fishery components. Amendment 21 would also expand flexibility in the limited access general category individual fishing quota fishery to reduce impacts of potential decreases in ex-vessel price and increases in operating costs.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: The Council has prepared a draft Environmental Assessment (EA) for

this action that describes the proposed measures Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at:

<https://www.nefmc.org/library/amendment-21>.

You may submit comments, identified by NOAA-NMFS-2021-0065, by the following method:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA-NMFS-2021-0065 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to

www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, (978) 281-9233, travis.ford@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic sea scallop fishery is prosecuted along the east coast from Maine to Virginia, although most fishing activity takes place between Massachusetts and New Jersey. Management measures were first adopted in 1982, but there have been several major revisions to the management program in the subsequent decades.

Development of the Limited Access General Category Fishery

The Council established the general category component as an open access permit category in 1994 while developing a limited access program for qualifying vessels (now the limited access component). Through Amendment 11 to the Scallop FMP (73 FR 20090, April 14, 2008), the Council transitioned the general category component from open access to limited access in order to limit fishing mortality and control fleet capacity. The Council's vision for the Limited Access General Category (LAGC) component was a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants, including vessels from smaller coastal communities. Amendment 11 established three LAGC permit categories, which allowed for continued participation in the general category fishery at varying levels. Vessels that met qualifying criteria were issued an LAGC individual fishing quota (IFQ) permit and allocated quota based on the 'contribution factor' (*i.e.* if they fished longer and landed more during the qualification period, they received a higher allocation). General category permit holders that did not meet the qualifying criteria for

an LAGC IFQ permit were eligible to receive either an LAGC Northern Gulf of Maine (NGOM) permit or LAGC incidental permit. Limited access vessels that fished under general category rules and qualified under the same IFQ qualification criteria were issued LAGC IFQ permits and allocated a portion (0.5 percent) of the total scallop allocation. Unlike vessels with only LAGC IFQ permits, limited access vessels that also qualified for an LAGC IFQ permit were not allowed to transfer quota to or from other vessels.

Northern Gulf of Maine Management Area

The Council also established the Northern Gulf of Maine (NGOM) Management Area and permit category through Amendment 11. The area was established to enable continued fishing and address concerns related to conservation, administrative burden, and enforceability of scallop fishing within the Gulf of Maine. Amendment 11 authorized vessels with either an LAGC NGOM permit or LAGC IFQ permit to fish within the NGOM Management Area at a 200 lb per day (91 kg per day) trip limit until the fleet reaches the annual total allowable catch (TAC) for the area. The Council did not recommend restrictions on limited access vessels fishing in the NGOM because the improved management and abundance of scallops in the major resource areas on Georges Bank and in the Mid-Atlantic region made access to Gulf of Maine scallops less important for the limited access boats and general category boats from other regions. From 2008 through 2017, limited access vessels were able to operate in the NGOM management area under days-at-sea (DAS) management as long as the LAGC TAC had not been caught. The initial measures were intended to allow directed scallop fishing in the NGOM, and the Council envisioned that management of this area would be reconsidered if the scallop population and fishery in the NGOM grew in the future.

For each of the years 2009 through 2015, the NGOM TAC of 70,000 lb (31,751 kg) was not caught, and the fishery remained open for the entire year. In fishing years 2016 and 2017, there was a notable increase in effort in the NGOM management area by

both LAGC and limited access vessels fishing the large year class of scallops on Stellwagen Bank, located mostly within the NGOM. Monitoring removals by the limited access component in the NGOM was challenging because vessels could fish both inside and outside NGOM management area while fishing under DAS management on the same trip.

In response to the increase in effort and landings in the NGOM area in 2016 and 2017, the Council developed the following problem statement for the Federal scallop fishery in the NGOM management area: Recent high landings and unknown biomass in the NGOM Scallop Management Area underscore the critical need to initiate surveys and develop additional tools to better manage the area and fully understand total removals.

Recent actions have developed measures that allow managers to track fishing effort and landings by all components from the NGOM management area. The NGOM TAC is now based on recent survey information, with separate TACs for the limited access and LAGC components. These measures were intended to be a short-term solution to allow controlled fishing in the NGOM management area until NGOM issues could be addressed more holistically, as this action proposes to do.

Limited Access General Category Individual Fishing Quota Possession Limits

The initial general category possession limit was set at 400 lb (181 kg) per trip through Amendment 4 (59 FR 2757; January 19, 1994). In 2007, Amendment 11 maintained the general category possession limit of 400 lb (181 kg) for qualifying IFQ vessels. Amendment 15 (76 FR 43746, July 21, 2011) increased the LAGC IFQ possession limit to 600 lb (272 kg) following concerns from industry members that the 400-lb (181-kg) possession limit was not economically feasible due to increased operating costs. The 200-lb (91-kg) trip limit increase was not expected to change the nature of the “day boat” fishery and would keep the LAGC IFQ component consistent with the vision statement laid out by the Council in Amendment 11. The Council

recently completed a program review of the LAGC IFQ fishery and analyzed the impacts of changes to IFQ trip limits. This review found that increasing the possession limit for IFQ trips would increase flexibility in fishing decisions, which could improve safety. Further, a higher possession limit would provide increased fishing revenue and vessel profit. The results of the program review are summarized in the Amendment 21 scoping document, which can be found at this website:

<https://www.nefmc.org/library/amendment-21>.

Quota Transfers by Limited Access/LAGC IFQ Vessels

Amendment 15 allowed LAGC IFQ permit holders to permanently transfer some or all of their quota allocation to another LAGC IFQ permit holder while retaining the permit itself. During development of Amendment 15, the Council considered an option that would have included limited access permit holders that also have LAGC IFQ permits (combo vessels) in this allowance; however, the Council decided against this option so as not to change the overall 5-percent and 0.5-percent allocations specified in Amendment 11. For example, if a combo vessel permanently transferred quota to an LAGC IFQ-only vessel, the 5-percent allocation would be expected to increase and would have implications on quota accumulation caps that apply to LAGC IFQ-only permit holders (*i.e.* 5-percent maximum for owners, 2.5-percent maximum for individual vessels).

Summary of Amendment 21

The Council initiated Amendment 21 to consider adjusting the management of the NGOM to allow for more controlled access by the limited access and LAGC components, to increase monitoring to support a growing directed scallop fishery in Federal waters, and to consider adjusting the LAGC IFQ program to support overall economic performance while allowing for continued participation in the general category fishery at varying levels. To address these issues, the Council approved Amendment 21 at its September 2020 meeting. Amendment 21 would:

- Change the Annual Catch Limit (ACL) flow chart to account for biomass in the NGOM as part of the Overfishing Limit (OFL) and the Acceptable Biological Catch (ABC) to be consistent with other portions of scallop resource management;
- Develop landing limits for all permit categories in the NGOM and establish an 800,000-lb (362,874 kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger would be divided, with 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets;
- Expand the scallop observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs;
- Allocate 25,000 lb (11,340 kg) of the NGOM allocation to increase the overall Scallop Research Set-Aside (RSA) and support Scallop RSA compensation fishing;
- Increase the LAGC IFQ possession limit to 800 lb (363 kg) per trip only for access area trips;
- Prorate the daily observer compensation rate in 12-hour increments for observed LAGC IFQ trips longer than 1 day; and
- Allow for temporary transfers of IFQ from limited access vessels with IFQ to LAGC IFQ-only vessels.

It is the Council's intent for Amendment 21 that the proposed measures become effective in concordance with updated specifications for fishing year 2022, which are currently under development through Framework Adjustment 34 to the Scallop FMP and have a target implementation date of April 1, 2022. If the implementation of Framework Adjustment 34 is delayed beyond April 1, 2022, the default measures, specifications, and possession limits for fishing year 2022 developed in Framework Adjustment 33 to the Scallop FMP (86 FR 27042, May 19, 2021) would still apply.

Proposed Measures

Accounting for the NGOM as part of the ABC and ACL

Amendment 21 would modify the ACL flowchart to account for the scallop biomass in the NGOM as part of the legal limits in the fishery by adding biomass from the area into calculations of the OFL and ABC. This action would move the accounting of the NGOM ACL from only within the OFL into the OFL and ABC/ACL for the entire fishery (Figure 1). By including exploitable scallop biomass from the NGOM as part of the scallop OFL and ABC, the ACL and sub-ACLs for the limited access and LAGC IFQ, and the limited access Annual Catch Target (ACT) would increase. The observer set-aside would also increase with the NGOM as part of the OFL/ABC. The ABC/ACL would be reduced by the NGOM Set-Aside value, along with the Research and Observer Set-Asides and incidental catch (Figure 1). The Council would set specifications for the NGOM through future specifications actions.

The Council would use the following approach to include the NGOM in the ACL flowchart:

1. Exploitable biomass from surveyed areas of the NGOM would be estimated;
2. The contribution to the OFL would be calculated at the fishing mortality (F) rate equal to the estimate of F of Maximum Sustainable Yield (F_{MSY}) for Georges Bank from the most recent research or management track assessment, unless direct estimates of F_{MSY} for the Gulf of Maine are available; and
3. Combining OFL values from areas on Georges Bank/Mid Atlantic and the NGOM could be done in a single model (e.g., add the NGOM to the Scallop Area Management Simulator model), or as separate calculations. The method would, in part, be determined by the available data.

Incorporating the NGOM into the ACL flowchart would have no impact on limited access DAS, or any other fishery allocation that is part of the Annual Projected Landings (APL).

Including the NGOM in the OFL and ABC would allow the fishery's overall limits to change with biomass in the NGOM. This would create a mechanism to increase the LAGC IFQ and limited access ACTs by accounting for biomass in the NGOM. In addition, incorporating the biomass from the NGOM into the ACL flowchart would increase the allocation that is available for the fishery's observer set-aside program.

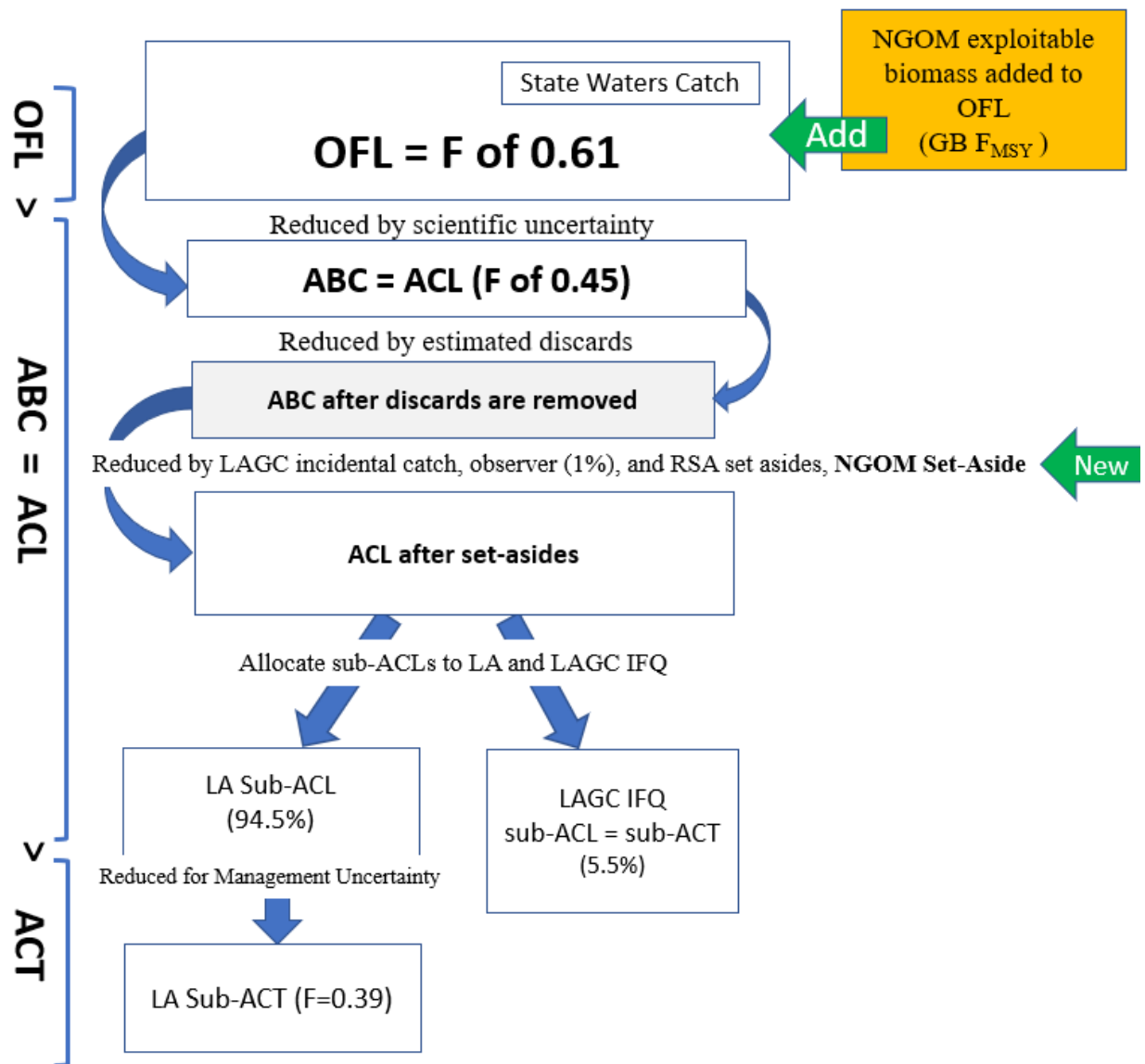


Figure 1 -- Example of Scallop Legal Limits (OFL, ABC, and ACL) With the NGOM Incorporated Into Estimates of the OFL and ABC.

Creating the NGOM Total Allowable Limit

Amendment 21 would require that the Council set an overall Total Allowable Limit (TAL) for the NGOM management area for all permit categories. If NGOM survey data are available, the NGOM TAL would be developed using a projection method to estimate exploitable biomass in upcoming fishing years. The allowable landings would be set by applying an F rate ranging from $F=0.15$ to $F=0.25$ to exploitable biomass in open areas of the NGOM, as specified by the Council. A portion of the NGOM TAL would be added to the fishery wide RSA (described below). In addition, one percent of the NGOM's contribution to the fishery-wide ABC would be removed from the NGOM TAL to off-set monitoring costs (described below).

NGOM Set-Aside and NGOM Annual Projected Landings

The remaining portion of NGOM TAL after contributions to the fishery-wide observer and RSAs are removed would then be allocated to the NGOM Set-Aside up to the NGOM Set-Aside trigger (800,000 lb (362,874 kg)). The NGOM Set-Aside would support a directed LAGC fishery (including NGOM and LAGC IFQ permitted vessels) in the NGOM Management Area at a possession limit of 200 lb (91 kg) per vessel per day. If there is additional allocation available above the 800,000-lb (362,874-kg) trigger, the allocation above the trigger would be shared between the NGOM Set-Aside (5 percent of the allocation above the trigger) and the NGOM APL (95 percent of the allocation above the trigger) for allocating to the limited access and LAGC IFQ fleets. The NGOM APL would then be added to the overall APL to increase allocations for the limited access and LAGC IFQ fleets. If there is allocation above the NGOM Set-Aside trigger, the Council

would determine the methods of how the NGOM APL could be harvested by the limited access and LAGC IFQ components in a subsequent specifications package or framework adjustment.

The trip limit for LAGC vessels fishing the NGOM Set-Aside (*i.e.*, NGOM and IFQ vessels) would be 200 lb (91 kg) per vessel per day. Landings from LAGC IFQ vessels fishing the NGOM Set-Aside would be deducted from their IFQ as well as from the NGOM Set-Aside. LAGC vessels with incidental catch permits (LAGC Category C) would be permitted to land up to 40 lb (18 kg) per day while fishing on non-scallop trips in the NGOM if the area is open for LAGC vessels fishing against the NGOM Set-Aside. Scallop landings by vessels with LAGC incidental permits would not count against the NGOM Set-Aside. Incidental catch from the area would be tracked as part of the final year-end catch accounting.

For catch accounting purposes, all landings from the NGOM would be included in the review of year-end catch data.

NGOM Accountability Measures

Any overage of NGOM Set-Aside or NGOM APL allocations fished inside the NGOM Management Area would be subject to a pound-for-pound payback in a subsequent fishing year after an overage is determined. If reliable data are available to calculate an overage (Year 1), NMFS may implement these accountability measures (AMs) in the following fishing year (Year 2) through the rulemaking process for updated fishery specifications. If reliable data are not available in time for the start of the following fishing year, then the AMs would be implemented 2 years after the overage occurred (Year 3). Data may not be available by the start of the following fishing year because NMFS does not complete final catch accounting until June of the following fishing year. For example, if an overage occurred in fishing year 2021, NMFS would not

have the final accounting data until June of fishing year 2022. The AMs could then be implemented at the April 1 start of fishing year 2023.

This approach to allocating the scallop resource in the NGOM would promote resource conservation by setting limits on total removals from the NGOM and implementing AMs for all permit categories fishing in the area. The NGOM Set-Aside approach, combined with options to grow the size of this set-aside with increasing biomass, would preserve and support a directed LAGC fishery in Federal waters in the NGOM, and distribute allocations to all permit types as the biomass in the area grows. This would allow for vessel-level allocations to the limited access and LAGC IFQ fleets, while setting aside allocation for LAGC NGOM permits to access the fishery on a first-come, first-serve basis. The set-aside approach would promote conservation in the management unit by setting a landings limit for all components of the fishery.

Expanding the Scallop Industry-Funded Observer Program to the NGOM

Amendment 21 would expand the observer call-in requirement to all scallop vessels operating in the NGOM, including NGOM-permitted vessels. This expansion of the call-in requirement would facilitate observer coverage in the NGOM Management Area.

This action would remove one percent of the NGOM ABC from the NGOM TAL to offset monitoring costs for vessels fishing in this area. This allocation would be removed from the NGOM TAL before allocating to the NGOM set-aside. This allocation could be used to support monitoring of all permit categories that have access to the NGOM Management Area. The NGOM monitoring set-aside would be added to the fishery-wide observer set-aside that is calculated as one percent of the ABC.

The scallop observer program would be expanded to cover directed scallop trips in Federal waters in the NGOM Management Area. Scallop trips by LAGC vessels in the NGOM are currently not covered by the observer program. This expanded program

would utilize the cumulative allocation of the NGOM observer set-aside and the observer set-aside to support observer coverage in the scallop fishery. All compensation allocation for all observed trips would come out of the same pool, and NMFS would administer a single scallop observer program. At a minimum, observer coverage levels for the NGOM Management Area would be set to meet Standard Bycatch Reporting Methodology requirements.

The amount of daily compensation available for LAGC trips in the NGOM may vary from the daily compensation rate for LAGC IFQ vessels that have a higher trip limit. Vessels selected to carry an observer would be able to land the full amount of the daily observer compensation rate in addition to the NGOM trip limit. For example, if the daily compensation rate is set at 100 lb (45 kg), vessels with observers would be able to land 300 lb (136 kg) that trip.

Expanding the observer call-in requirement to the NGOM Management Area would facilitate the deployment of observers on directed scallop trips in Federal waters. Allowing vessels to land the daily observer compensation rate in addition to the trip limit is consistent with existing regulations for limited access and LAGC IFQ vessels when those vessels carry observers. Expanding the observer call-in requirement to directed scallop fishing in the NGOM means that monitoring requirements will be consistent for all scallop permit types across the entirety of the Atlantic sea scallop resource within the U.S. Exclusive Economic Zone.

NGOM Research Set-Aside

Amendment 21 would set-aside 25,000 lb (11,340 kg) from the NGOM TAL to support RSA compensation fishing in the NGOM management area and increase the overall allocation available for the scallop RSA program. The total amount of RSA available would be the sum of the NGOM RSA and the existing 1.25 million-lb (566,990-kg) fishery-wide RSA (*i.e.*, 1.275 million lb (573,330 kg)).

RSA compensation fishing in the NGOM management area would be allowed. Although, NGOM RSA will be combined with the overall RSA, RSA compensation fishing in the NGOM would be capped at the available NGOM RSA, *i.e.*, 25,000 lb (11,340 kg). Any vessels that are awarded NGOM RSA compensation would be required to declare into the area and fish exclusively within the NGOM Management Area. Compensation fishing in the NGOM Management Area could be done to support any research project awarded through the Scallop RSA. However, projects focusing on research in the NGOM would have the first opportunity to fish compensation allocation in the NGOM. NMFS would administer this process.

This action would not mandate that NGOM RSA be harvested strictly in the NGOM Management Area. Vessels allocated NGOM RSA would have an option to fish NGOM RSA in the NGOM or in any other area available to RSA compensation fishing.

Using a portion of the NGOM TAL to increase the size of the overall Scallop RSA program would allow for the funding of additional scallop-related research and provide opportunities for vessels to complete compensation fishing within the NGOM management unit. Limiting the amount of RSA compensation fishing that can occur in the NGOM is consistent with the goal of accurately monitoring catch in the management area.

Because 25,000 lb (11,340 kg) is a relatively small proportion of the current RSA, increasing the set-aside by this amount may have limited biological implications if the allocation can be fished in any area open to compensation fishing. This would maintain some of the flexibility of the RSA program, while increasing the allocation available to support research. Further, a 25,000-lb (11,340-kg) set-aside is consistent with recent RSA awards that focused on research in the NGOM area.

Limited Access General Category Individual Fishing Quota Possession Limit

Amendment 21 would increase the LAGC IFQ possession limit to 800 lb (363 kg) for access area trips and maintain the 600-lb (172-kg) possession limit for open area trips. The LAGC IFQ component has been subject to a possession limit since the program's inception through Amendment 11. Interest in increasing the 600-lb (172-kg) trip limit through this action is based on the continued increase of operating expenses, which are principally driven by fuel costs associated with longer steam times. For LAGC IFQ vessels that elect to do so, transiting farther offshore to fish access areas with higher landings per unit of effort and improved meat yield leads to increased trip costs due to higher fuel expenses associated with longer steam times. Increasing the access area possession limit would reduce the overall number of trips and combined steam time needed to harvest quota from offshore access areas, thereby reducing overall trip costs (*i.e.*, fuel) and operating expenses (*i.e.*, vessel maintenance) relative to the current 600-lb (172-kg) limit. Increasing the access area possession limit could offer LAGC IFQ vessels more flexibility with regard to timing access area trips around weather conditions, which could potentially improve safety in this component of the fishery.

Observer Compensation Available for LAGC IFQ Vessels

Amendment 21 would make LAGC IFQ vessels eligible for additional compensation when carrying an observer on board and fishing trips longer than 1 day (24 hours). The daily compensation rate, as determined by NMFS, would be prorated at 12-hour increments for trips exceeding 24 hours. The amount of compensation a vessel could receive on one trip would be capped at 2 days (48 hours) and vessels fishing longer than 48 hours would not receive additional compensation allocation. For example, if the observer compensation rate is 200 lb/day (90.7 kg/day) and an LAGC IFQ vessel carrying an observer departs on July 1 at 2200 and lands on July 3 at 0100, the length of the trip would equal 27 hours, or 1 day and 3 hours. In this example, the LAGC IFQ vessel would be eligible for 1 day plus 12 hours of compensation allocation, *i.e.*, 300 lb

(136 kg). An LAGC IFQ vessel would be able to harvest the trip limit and the daily compensation rate on the observed trip, or the vessel could harvest any unfished compensation on a subsequent trip while adhering to the commercial possession limit.

Aligning the amount that vessels can be compensated when carrying an observer with the length of a typical LAGC IFQ trip would reduce the risk of observer bias in the LAGC IFQ fishery. Currently, LAGC IFQ vessels are allowed 1 day of compensation for carrying an observer regardless of the length of a trip but are required to assume the cost of having the observer on board even when a trip exceeds the 1-day limit. Prorating in this method would make the level of compensation to a vessel more accurate with regard to the cost of carrying an observer on board for the full length of a trip. In addition, it would reduce the incentive for vessels to fish longer trips for the purpose of receiving additional compensation. Relieving vessels of the additional cost burden for trips of over 1 day would reduce the likelihood that fishing behavior would be different for observed trips versus unobserved trips.

Temporary Transfer of IFQ from Limited Access Vessels with IFQ (Combo Vessels) to LAGC IFQ-only Vessels

Amendment 21 would allow temporary transfers of IFQ from combo vessels to LAGC IFQ-only permits and would maintain the existing prohibition on transferring quota in to combo vessels. This action would not change how IFQ is allocated. Quota accumulation caps would remain consistent with the limits established through Amendment 15 for LAGC IFQ-only permits, regardless of any additional quota that may become available through one-way, temporary transfers from combo vessels. An individual LAGC IFQ permit still would not be able to hold more than 2.5 percent of the IFQ allocated to the LAGC IFQ component in a year and an ownership entity still cannot hold more than 5 percent of the IFQ allocated to the LAGC IFQ component in a year.

Allowing one-way, temporary transfers from combo vessels to LAGC IFQ-only permits would increase the overall level of quota available to LAGC IFQ-only vessels, and it would not require changes to how allocations are estimated and distributed among the two fleets. Increasing the pool of quota that would be available to the LAGC IFQ-only fishery through temporary transfers could increase the level of participation for vessels currently in the fishery or potentially lead to more participation in terms of active vessels. Increasing potential harvest for existing participants and/or supporting additional vessels in the IFQ fishery would be expected to improve the overall performance of this component of the fishery. Allowing temporary transfers would give combo vessels the choice to lease out some or all of their quota on an annual basis.

Specifications and Framework Adjustment Process

The regulations at § 648.55 list management measures that may be changed or implemented through specifications or framework actions. During the development of Amendment 21, the Council identified a list of specific issues that may be addressed through future specifications actions or framework adjustments. The existing scallop regulations would not need to be expanded to address concepts that the Council would like to adjust through a specifications package or a framework adjustment in the future. The Council's list included:

1. § 648.55(f)(25) Set-asides for funding research;
 - a. Contribution of RSA percentage and /or assigned pounds from the NGOM allocation.
2. § 648.55(f)(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
 - a. Observer set-aside percentage from the NGOM Allocation.

3. § 648.55(f)(35) Adjustments to the Northern Gulf of Maine scallop fishery measures;
 - a. Partition the NGOM into multiple sub-areas with separate allocations;
 - b. Partition the NGOM Set-Aside is multiple seasons;
 - c. Modify the F rate used to set the NGOM TAL; and
 - d. Harvest methods of the NGOM APL by the IFQ and limited access boats.
4. § 648.55(f)(37) Increases or decreases in the LAGC possession limit;
 - a. Accounting for access area trips in the LAGC IFQ fishery.
5. § 648.55(f)(38) Adjustments to aspects of ACL management, including accountability measures;
 - a. Modify how the NGOM is accounted for in the calculation of OFL, ABC, and ACLs.

In addition, the Council clarified that it could develop options for electronic monitoring to replace at-sea monitors in a future framework based on existing language in these existing regulations:

1. § 648.55(f)(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations;
2. § 648.11(g) *Industry-funded monitoring programs*. Fishery management plans (FMPs) managed by the New England Fishery Management Council (New England Council), including Atlantic Herring, Atlantic Salmon, Atlantic Sea Scallops, Deep-Sea Red Crab, Northeast Multispecies, and Northeast Skate Complex, may include industry-funded monitoring (IFM) programs to supplement existing monitoring required by the Standard Bycatch Reporting Methodology (SBRM), Endangered Species Act, and the Marine Mammal Protection Act. IFM programs may use observers, monitors, including at-sea

monitors and portside samplers, and electronic monitoring to meet specified IFM coverage targets. The ability to meet IFM coverage targets may be constrained by the availability of Federal funding to pay NMFS cost responsibilities associated with IFM.

Identifying a list of changes that may be made to the FMP in subsequent specification packages or framework adjustments would give the Council flexibility to address specific issues without initiating an amendment to the FMP. This list is intended to capture the range of issues that could be taken up in a later action and was discussed during the development of Amendment 21, but is not intended to limit the range of issues that could be addressed under existing regulatory authority.

Regulatory Adjustments and Corrections under Regional Administrator Authority

NMFS is proposing several changes consistent with section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments do not make any substantive changes to the implications of the current regulations. First, NMFS would revise § 648.14(i) to more clearly define the prohibitions based on the scallop regulations at § 648 Subpart D. As a result, this proposed rule includes revisions to the regulatory text that would reorganize and condense references to possession limits and restrictions. The specific regulations being revised or removed are specified in Table 1. Second, in §§ 648.2, 648.14(i), 648.52, 648.55, and 648.59, NMFS would make revisions to consistently reference the Scallop Access Area Program throughout the regulations. Third, in § 648.14(i)(x), NMFS would clarify the presumption related to where scallops are caught (*i.e.*, Federal/state waters), not whether a vessel has a Federal scallop permit. Fourth, NMFS would update §§ 648.14(i)(x)(3)(iv)(B) and 648.52(a)(1) with a corrected reference to § 648.10(f). Fifth, in § 648.52(b), (c), (d), (e), (f), NMFS would add

headings for consistency across paragraphs. Sixth, in § 648.52(f), NMFS would remove duplicative possession limit language for IFQ vessels. Seventh, in § 648.53(h)(3)(i)(A) and (B), NMFS would clarify that the IFQ accumulation cap applies to the annual IFQ allocation, not the IFQ sub-ACL. Eighth, in § 648.53(h)(5)(i) and (ii), NMFS would clarify that these regulations apply to IFQ permit holders regardless of whether the permit is in confirmation of permit history (CPH). Ninth, in § 648.59(b)(4), to promote safety at sea, NMFS would allow vessels to enter or exit a Scallop Access Area more than once per trip if there is a compelling safety reason.

Finally, due to the extensive regulatory changes in this action, we are updating references throughout the scallop regulations that will change based on the proposed regulatory adjustments. We have included a summary of all of the proposed regulatory changes in this rule in Table 1.

Table 1 -- Summary of Proposed Regulatory Changes to 50 CFR Part 648

Section	Authority	Summary of Proposed Changes
§§ 648.2, 648.14(i), 648.52, 648.55, 648.59	305(d)	Changing to consistently reference the Scallop Access Area Program throughout the regulations.
§ 648.14(i)(iii)	305(d)	Clarifying possession limits and restrictions which are already described in §§ 648.52 and 648.59.
§ 648.14(i)(x)	305(d)	Clarifying the presumption related to where scallops are caught (<i>i.e.</i> , Federal/state waters), not whether a vessel has a Federal scallop permit.
§ 648.14(i)(x)(3)(iii)(C) and (D)	305(d)	Clarifying possession limits and restrictions which are already described in § 648.52 for LAGC vessels in the NGOM are clearly stated later in the section specific to IFQ and NGOM vessels. Deleting to remove duplicative text.
§§ 648.14(i)(x)(3)(iv)(B), 648.52(a)(1)	305(d)	Updating with corrected reference to § 648.10(f).
§ 648.14(i)(x)(4)(i)(A)	305(d) and Amendment 21	Revising IFQ possession and landing regulations based on Amendment 21 measures. Clarify regulations by referencing IFQ possession limits for open and access areas in § 648.52(a).
§ 648.14(i)(x)(4)(i)(C)	Amendment 21	Updating NGOM landings and possession regulations with Amendment 21 language (<i>i.e.</i> , NGOM Set-Aside).
§ 648.14(i)(x)(4)(i)(D) and (G)	305(d)	Reducing duplicative language around possession and landing limits that are clearly stated later in § 648.52(a) and (c).
§ 648.14(i)(x)(5)(ii)	305(d)	Clarifying by cutting duplicative landings and possession prohibition, and referencing NGOM possession limit that is clearly stated in § 648.52(a).
§ 648.14(i)(x)(5)(iii)	Amendment 21	Updating NGOM regulations with Amendment 21 language (<i>i.e.</i> , NGOM Set-Aside).
§ 648.14(i)(x)(6)	305(d)	Clarifying regulations by removing duplicative landing and possession limit prohibition for incidental permits, and referencing incidental possession limit that is clearly stated in § 648.52.
§ 648.52(a)(1) and (2)	Amendment 21	Updating regulations with LAGC IFQ possession limits for open and access area trips.
§ 648.52(a)(2)	Amendment 21	Clarifying that default access area trips in fishing year 2022 will be subject to the 600-lb (272-kg) trip limit.
§ 648.52(b), (c), (d), (e), (f)	305(d)	Adding headings for consistency.
§ 648.52(a)(2)	Amendment 21	Making in-shell possession limit consistent with increased LAGC IFQ access area trip limit.
§ 648.52(b)	Amendment 21	Updating NGOM regulations with Amendment 21 language (<i>i.e.</i> , NGOM Set-Aside).

§ 648.52(f)	305(d)	Removing duplicative possession limit language for IFQ vessels.
§ 648.53(a)(3)(ii)	Amendment 21	Updating APL language to incorporate NGOM catch limit measures.
§ 648.53(a)(8)	Amendment 21	Adding language describing NGOM TAL and allocation structure.
§ 648.53(g)(1)	Amendment 21	Including NGOM contribution to observer set-aside.
§ 648.53(h)(3)(i)(A) and (B)	305(d)	Clarifying that the IFQ accumulation cap applies to the annual IFQ allocation, not the IFQ sub-ACL.
§ 648.53(h)(5)(i) and (ii)	305(d)	Clarifying that these regulations apply to IFQ permit holders regardless of whether permit is in CPH.
§ 648.53(h)(5)(i)(B)	Amendment 21	Specifying that temporary transfers from combo vessels to IFQ-only are allowed.
§ 648.53(h)(5)(ii)(A) and (iii)	Amendment 21	Clarifying that combo vessels are prohibited from permanently transferring or receiving IFQ.
§ 648.55(a)(1)	Amendment 21	Updating language to reflect NGOM catch limits.
§ 648.56(d)	Amendment 21	Including NGOM contribution to RSA.
§ 648.59(b)(4)	305(d)	Adjusting to promote safety at sea.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

During the development of preferred alternatives in Amendment 21, NMFS and the Council considered ways to reduce the regulatory burden on and provide flexibility to the regulated community. The measures that would be implemented by the preferred alternatives related to NGOM allocations and the LAGC IFQ possession limit in access areas, along with other Amendment 21 actions, would increase the economic benefits on small entities both in the short- and long-term. The proposed action for the NGOM allocation would adjust landing limits and related research and observer set-asides based on annual scallop surveys in the NGOM area, leading to increased harvest and wider fishery participation in the future. However, there would be no change to the LAGC IFQ allocation when increasing the LAGC IFQ possession limit in access areas.

Overall, the preferred alternatives in Amendment 21 would ensure that catch levels are sustainable, reduce the risk of overfishing, and maximize yield and economic benefits. The establishment of the NGOM Set-Aside and the increase to the LAGC IFQ access area possession limit are expected to have an immediate positive economic gain with potential for increased fishing participants/participation or effort, particularly in the

NGOM area when there are more scallop fishing opportunities. The preferred alternatives in other actions of Amendment 21 also have overall positive economic effects benefitting both small and large entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a collection-of-information requirement subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information OMB Control No. 0648-0546 by expanding the number of vessels required to carry observers and call-in to the observer program. Prior to Amendment 21, NGOM-permitted vessels were not required to carry observers. Amendment 21 would require that NGOM vessels call in to the observer program and, when selected, procure and carry an observer. Expanding the observer call-in requirement to directed scallop fishing in the NGOM means that monitoring requirements will be consistent for all scallop permit types across the entirety of the Atlantic sea scallop resource within the U.S. Exclusive Economic Zone. This proposed change would increase the number of respondents by 110 (512 respondents to 622 respondents). This would result in an additional 933 (5,252 hours to 6,185 hours) burden hours and an additional \$5,608 (\$44,937 to \$50,545) in total annual cost burden to the respondents. Public reporting burden for calling into the observer program is estimated to average 10 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be

collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review – Open for Public Comments” or by using the search function and entering the OMB Control Number 0648-0546.

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 16, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, revise the definition of “Open areas” to read as follows:

§ 648.2 Definitions.

* * * * *

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Scallop Access Area Program specified in §§ 648.59 and 648.60, the Northern Gulf of Maine Management Area specified in § 648.62, Habitat Management Areas specified in §648.370, Dedicated Habitat Research areas specified in § 648.371, the Frank R. Lautenberg Deep-Sea Coral Protection Area described in § 648.372, or the New England Deep-Sea Coral Protection Area in § 648.373.

* * * * *

3. Amend § 648.14 by:

- a. Revising paragraphs (i)(1)(iii) and (x), (i)(2)(vi) introductory text, and (i)(2)(vi) (C), (D), and (E);
- b. Removing paragraphs (i)(3)(iii)(C) and (D);
- c. Revising paragraph (i)(3)(iv)(B), (i)(3)(v)(C) and (D), (i)(4)(i)(A);
- d. Removing and reserving paragraph (i)(4)(i)(B);
- e. Revising paragraph (i)(4)(i)(C);
- f. Removing and reserving paragraph (i)(4)(i)(D);
- g. Removing paragraphs (i)(4)(i)(G) and (H);
- h. Revising paragraphs (i)(4)(ii)(A) and (B);
- i. Removing and reserving paragraph (i)(5)(ii);
- j. Revising paragraph (i)(5)(iii); and
- k. Removing paragraph (i)(6).

The revisions read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) *Possession and landing.* Fish for, land, or possess on board a vessel per trip, or possess at any time prior to a transfer to another person for a commercial purpose, other than solely for transport on land in excess of any of the possession and/or landing limits described in §§ 648.52 and 648.59.

* * * * *

(x) *Presumption.* For purposes of this section, the following presumption applies: Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of evidence demonstrates that such scallops were harvested by a vessel fishing exclusively for scallops in state waters.

* * * * *

(2) * * *

(vi) *Scallop Rotational Area Management Program and Scallop Access Area Program requirements.*

(C) Fish for, possess, or land scallops in or from a Scallop Access Area in excess of the vessel's remaining specific allocation for that area as specified in § 648.59(b)(3) or the amount permitted to be landed from that area.

(D) Possess more than 50 bu (17.6 hL) of in-shell scallops outside the boundaries of a Scallop Access Area by a vessel that is declared into the Scallop Access Area Program as specified in § 648.59.

(E) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

* * * * *

(3) * * *

(iv) * * *

(B) Fail to comply with any requirement for declaring in or out of the LAGC scallop fishery or other notification requirements specified in § 648.10(f).

* * * * *

(v) * * *

(C) Fish for or land per trip, or possess in excess of 40 lb (18.1 kg) of shucked scallops at any time in or from any Scallop Access Area specified at § 648.60, unless declared into the Scallop Access Area Program.

(D) Fish for, possess, or land scallops in or from any Scallop Access Area without an observer on board, unless the vessel owner, operator, or manager has received a waiver to carry an observer for the specified trip and area fished.

* * * * *

(4) * * *

(i) * * *

(A) Fish for or land per trip, or possess at any time, in excess of the possession and landing limits described in § 648.52(a).

* * * * *

(C) Declare into the NGOM scallop management area and fish against the NGOM Set-Aside after the effective date of a notification published in the **Federal Register** stating that after the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

(ii) * * *

(A) Have an ownership interest in vessels that collectively are allocated more than 5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

(B) Have an IFQ allocation on an IFQ scallop vessel of more than 2.5 percent of the total IFQ scallop APL as specified in § 648.53(a)(9).

* * * * *

(5) * * *

(iii) Fish for, possess, or land scallops in state or Federal waters of the NGOM management area after the effective date of notification in the Federal Register that the LAGC share of the NGOM Set-Aside has been harvested as specified in § 648.62, unless the vessel is fishing exclusively in state waters, declared a state-waters only NGOM trip, and is participating in an approved state waters exemption program as specified in § 648.54, or unless the vessel is participating in the scallop RSA program as specified in § 648.56.

* * * * *

4. In § 648.52, revise paragraphs (a) through (f) to read as follows:

§ 648.52 Possession and landing limits.

(a) *IFQ trips.*

(1) *Open area trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ scallop fishery in the open area, as specified in § 648.10(f), or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area, unless as specified in paragraph (g) of this section or exempted under the state waters exemption program described in § 648.54, may not possess or land, per trip, more than 600 lb (272 kg) of shucked scallops, or possess more than 75 bu (26.4 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS

Demarcation Line on a properly declared IFQ scallop trip, or on a properly declared NE multispecies, surfclam, or ocean quahog trip, or other fishery requiring a VMS declaration, and not fishing in a scallop access area.

(2) *Access areas trips.* A vessel issued an IFQ scallop permit that is declared into the IFQ Scallop Access Area Program, as specified in § 648.10(f), may not possess or land, per trip, more than 800 lb (363 kg) of shucked scallops, or possess more than 100 bu (35.2 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 100 bu (35.2 hL) of in-shell scallops seaward of the VMS Demarcation Line on a properly declared IFQ scallop access area trip. Vessels fishing the 2022 default access area trips shall be subject to a 600-lb (272-kg) possession limit, as described in § 648.59(g)(3)(v).

(b) *NGOM trips.* A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery and fishing against the NGOM Set-Aside as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) *Incidental trips.* A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only

once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(d) *Limited access vessel access area trips.* Owners or operators of vessels with a limited access scallop permit that have properly declared into the Scallop Access Area Program as described in § 648.59 are prohibited from fishing for or landing per trip, or possessing at any time, scallops in excess of any sea scallop possession and landing limit set by the Regional Administrator in accordance with § 648.59(b)(5).

(e) *Limited access vessel open area in-shell scallop possession limit.* Owners or operators of vessels issued limited access permits are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.6 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

(f) *Limited access vessel access area in-shell scallop possession limit.* A limited access vessel that is declared into the Scallop Area Access Program as described in § 648.59, may not possess more than 50 bu (17.6 hL) of in-shell scallops outside of the Access Areas described in § 648.60.

* * * * *

5. Amend § 648.53 by:

a. Revising paragraphs (a)(3)(ii), (8), (g)(1), (h)(3)(i)(A) and (B), (5)(i), (5)(ii)(A), and (5)(iii); and

b. Adding paragraph (a)(9).

The revisions and addition read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, individual fishing quotas (IFQ).

(a) * * *

(3) * * *

(ii) *APL*. The APL shall be equal to the combined projected landings by the limited access and LAGC IFQ, in open areas, access areas, and Northern Gulf of Maine management area after set-asides (RSA, NGOM, and observer) and incidental landings are accounted for, for a given fishing year. Projected scallop landings are calculated by estimating the landings that will come from open area, access area, and Northern Gulf of Maine effort combined for both limited access and LAGC IFQ fleets. These projected landings shall not exceed the overall ABC/ACL and ACT, as described in paragraph (a) of this section.

* * * * *

(8) *Northern Gulf of Maine Total Allowable Landings (TAL)*. The NGOM TAL is the landings available for harvest from the NGOM Management Area. The TAL shall be set by applying a fishing mortality rate of $F=0.15$ to $F=0.25$ to exploitable biomass estimated from open areas of the NGOM.

(i) *NGOM Observer Set-Aside*. The NGOM TAL shall be reduced by 1 percent to off-set monitoring costs for vessels fishing in this area. The NGOM monitoring set-aside would be added to the fishery-wide observer set-aside, as described in paragraph (g) of this section.

(ii) *NGOM Research Set-Aside*. The NGOM TAL shall be reduced by 25,000 lb (11,340 kg) to be added to the fishery-wide research set-aside, as described in § 648.56(d).

(iii) *Northern Gulf of Maine Set-Aside*. The NGOM Set-Aside shall be the portion of the NGOM TAL that is available for harvest by the LAGC IFQ and NGOM fleets at 200 lb (91 kg) per trip per day as set through specifications. After the observer and research set-asides are removed, the first 800,000 lb (362,874 kg) of the NGOM TAL shall be allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874

kg), 5 percent shall go to the NGOM Set-Aside, and 95 percent shall go to the NGOM Annual Projected Landings.

(iv) *NGOM APL*. The NGOM APL shall be the portion of the NGOM TAL that is available for harvest for the limited access and LAGC IFQ fleets set through specifications after the observer and research set-asides are removed and the first 800,000 lb (362,874 kg) of the NGOM TAL are allocated to the NGOM Set-Aside. For all allocation above 800,000 lb (362,874 kg), 5 percent shall go to the NGOM set-aside, and 95 percent shall go to the NGOM APL. The method in which the limited access and LAGC IFQ components will access the NGOM APL will be determined in future specifications.

(9) *Scallop fishery catch limits*. The following catch limits will be effective for the 2021 and 2022 fishing years:

Table 1 to Paragraph (a)(9) - Scallop Fishery Catch Limits

Catch limits	2021 (mt)	2022 (mt) ¹
OFL	45,392	41,926
ABC/ACL (discards removed)	30,517	28,074
Incidental Catch	23	23
RSA	567	567
Observer Set-Aside	305	281
ACL for fishery	29,622	27,203
Limited Access ACL	27,993	25,707
LAGC Total ACL	1,629	1,496

Catch limits	2021 (mt)	2022 (mt) ¹
LAGC IFQ ACL (5 percent of ACL)	1,481	1,360
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	148	136
Limited Access ACT	24,260	22,279
APL (after set-asides removed)	17,269	(1)
Limited Access APL (94.5 percent of APL)	16,319	(1)
Total IFQ Annual Allocation (5.5 percent of APL) ²	950	712
LAGC IFQ Annual Allocation (5 percent of APL) ²	863	648
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) ²	86	65

¹ The catch limits for the 2022 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2022 that will be based on the 2021 annual scallop surveys. The 2022 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

² As specified in paragraph (a)(6)(iii)(B) of this section, the 2022 IFQ annual allocations are set at 75 percent of the 2021 IFQ Annual Allocations.

* * * * *

(g) * * *

(1) To help defray the cost of carrying an observer, 1 percent of the ABC/ACL defined in paragraph (a)(3) of this section and 1 percent of the NGOM ABC/ACL shall be set aside to be used by vessels that are assigned to take an at-sea observer on a trip. This observer set-aside is specified through the specifications or framework adjustment process defined in § 648.55.

* * * * *

(h) * * *

(3) * * *

(i) * * *

(A) Unless otherwise specified in paragraphs (h)(3)(i)(B) and (C) of this section, a vessel issued an IFQ scallop permit or confirmation of permit history shall not be issued more than 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section.

(B) A vessel may be initially issued more than 2.5 percent of the IFQ-only annual allocation allocated to the IFQ scallop vessels as described in paragraph (a)(6) of this section, if the initial determination of its contribution factor specified in accordance with § 648.4(a)(2)(ii)(E) and paragraph (h)(2)(ii) of this section, results in an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section. A vessel that is allocated an IFQ that exceeds 2.5 percent of the IFQ-only annual allocation to the IFQ scallop vessels as described in paragraph (a)(6) of this section, in accordance with this paragraph (h)(3)(i)(B), may not receive IFQ through an IFQ transfer, as specified in paragraph (h)(5) of this section. All scallops that have been allocated as part of the original IFQ allocation or transferred to a vessel during a given fishing year shall be counted towards the vessel cap.

* * * * *

(5) * * *

(i) *Temporary IFQ transfers.* (A) *IFQ-only vessels.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Temporary IFQ transfers

shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

(B) *Limited access vessels with LAGC IFQ.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of a limited access vessel with LAGC IFQ (and/or a limited access permit with LAGC IFQ in confirmation of permit history) may temporarily transfer (*e.g.*, lease) its entire IFQ allocation, or a portion of its IFQ allocation, to an IFQ-only scallop vessel that does not have a limited access permit. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.*, re-transferred). The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

* * * * *

(ii) * * *

(A) Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer IFQ permanently to or from another IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit. Any such transfer cannot be limited in duration and is permanent as to the transferee, unless the IFQ is subsequently permanently transferred to another IFQ scallop vessel. IFQ may be permanently transferred to a vessel and then be re-transferred (temporarily transferred (*i.e.*, leased) or permanently transferred) by such vessel to another vessel in the same fishing year. There is no limit on

how many times IFQ can be re-transferred in a fishing year. Limited access vessels with LAGC IFQ permits are prohibited from permanently transferring or receiving IFQ.

* * * * *

(iii) *IFQ transfer restrictions.* The owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may transfer that vessel's IFQ to another IFQ scallop vessel, regardless of whether or not the vessel has fished under its IFQ in the same fishing year. Requests for IFQ transfers cannot be less than 100 lb (46.4 kg), unless that the transfer reflects the total IFQ amount remaining on the transferor's vessel, or the entire IFQ allocation. IFQ may be temporarily or permanently transferred to a vessel and then temporarily re-transferred (*i.e.*, leased) or permanently re-transferred by such vessel to another vessel in the same fishing year. There is no restriction on how many times IFQ can be re-transferred. A transfer of an IFQ may not result in the sum of the IFQs on the receiving vessel exceeding 2.5 percent of the allocation to IFQ-only scallop vessels. A transfer of an IFQ, whether temporary or permanent, may not result in the transferee having a total ownership of, or interest in, general category scallop allocation that exceeds 5 percent of the allocation to IFQ-only scallop vessels. Limited access scallop vessels that are also issued an IFQ scallop permit may not permanently transfer or receive IFQ. Further, they may not temporarily receive IFQ.

* * * * *

6. In § 648.55, revise paragraphs (a)(1) and (f) introductory text to read as follows:

§ 648.55 Specifications and framework adjustments to management measures.

(a) * * *

(1) The Scallop Plan Development Team (PDT) shall meet at least every 2 years to assess the status of the scallop resource and to develop and recommend the following

specifications for a period of up to 2 years, as well as second or third-year default measures, for consideration by the New England Fishery Management Council's Atlantic Sea Scallop Oversight Committee and Advisory Panel: OFL, overall ABC/ACL, sub-ACLs, sub-ACTs, DAS open area allocations, possession limits, modifications to rotational area management (*e.g.*, schedule, rotational closures and openings, seasonal restrictions, modifications to boundaries, etc.), access area limited access poundage allocations and LAGC IFQ fleet-wide trip allocations, annual incidental catch target TAC, and NGOM TAL.

* * * * *

(f) *Framework adjustments.* The Council may at any time initiate a framework adjustment to add or adjust management measures within the Scallop FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the FMP. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures may include specifications measures specified in paragraph (a) of this section, which must satisfy the criteria set forth § 648.53(a) in order to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis. Other measures that may be changed or implemented through framework action include:

* * * * *

7. In § 648.56, revise paragraph (d) is to read as follows:

§ 648.56 Scallop research.

* * * * *

(d) Available RSA allocation shall be 1.275 million lb (578 mt) annually, which shall be deducted from the ABC/ACL specified in § 648.53(a) prior to setting ACLs for the limited access and LAGC fleets, as specified in § 648.53(a)(3) and (4), respectively. Approved RSA projects shall be allocated an amount of scallop allocation that can be harvested in open areas, available access areas, and the NGOM. The specific access areas that are open to RSA harvest and the amount of NGOM allocation to be landed through RSA harvest shall be specified through the framework process as identified in § 648.59(e)(1). In a year in which a framework adjustment is under review by the Council and/or NMFS, NMFS shall make RSA awards prior to approval of the framework, if practicable, based on total scallop allocation needed to fund each research project. Recipients may begin compensation fishing in open areas prior to approval of the framework, or wait until NMFS approval of the framework to begin compensation fishing within approved access areas.

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8. In § 648.59, revise the section title and paragraphs (a) introductory text, (a)(3), (b)(4), (g)(3)(i), and (4)(ii) to read as follows:

§ 648.59 Scallop Rotational Area Management Program and Scallop Access Area Program requirements.

(a) The Scallop Rotational Area Management Program consists of Scallop Rotational Areas, as defined in § 648.2. Guidelines for this area rotation program (*i.e.*, when to close an area and reopen it to scallop fishing) are provided in § 648.55(a)(6). Whether a rotational area is open or closed to scallop fishing in a given year, and the appropriate level of access by limited access and LAGC IFQ vessels, are specified

through the specifications or framework adjustment processes defined in § 648.55. When a rotational area is open to the scallop fishery, it is called an Access Area and scallop vessels fishing in the area are subject to the Scallop Access Area Program Requirements specified in this section. Areas not defined as Scallop Rotational Areas specified in § 648.60, Habitat Management Areas specified in § 648.370, or areas closed to scallop fishing under other FMPs, are governed by other management measures and restrictions in this part and are referred to as Open Areas.

* * * * *

(3) *Transiting a Scallop Access Area.* Any sea scallop vessel that has not declared a trip into the Scallop Access Area Program may enter a Scallop Access Area, and possess scallops not caught in the Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2. Any scallop vessel that has declared a trip into the Scallop Area Access Program may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area provided its gear is stowed and not available for immediate use as defined in § 648.2, or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Scallop Rotational Area, as defined in § 648.60(d), if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

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(b) * * *

(4) *Area fished.* While on a Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Scallop Access Area more than once per trip unless there is a

compelling safety reason. A vessel on a Scallop Access Area trip may not enter or be in another Scallop Access Area on the same trip except such vessel may transit another Scallop Access Area as provided for under paragraph (a)(3) of this section.

* * * * *

(g) * * *

(3) * * *

(i) An LAGC scallop vessel authorized to fish in the Scallop Rotational Areas specified in § 648.60 or in paragraph (g)(3)(iv) of this section may land scallops, subject to the possession limit specified in § 648.52(a)(2), unless the Regional Administrator has issued a notice that the number of LAGC IFQ access area trips have been or are projected to be taken. All LAGC IFQ access area trips must be taken in the fishing year that they are allocated (*i.e.*, there are no carryover trips). The total number of LAGC IFQ trips in an Access Area is specified in the specifications or framework adjustment processes defined in § 648.55.

* * * * *

(4) * * *

(ii) *Other species.* Unless issued an LAGC IFQ scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, an LAGC IFQ vessel fishing in the Closed Area I, Closed Area II, Closed Area II Extension, and Nantucket Lightship Rotational Areas specified in § 648.60, and the Nantucket Lightship North Scallop Access Area specified in paragraph (g)(3)(iv) of this section is prohibited from possessing any species of fish other than scallops and monkfish, as specified in § 648.94(c)(8)(i). Such a vessel may fish in an approved SAP under § 648.85 and under multispecies DAS in the scallop access area, provided that it has not declared into the Scallop Access Area Program. Such a vessel is prohibited from fishing for, possessing, or landing scallops.

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